



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: SRC-01-043-51528 Office: Texas Service Center Date:

JAN 15 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(I) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(I)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected pursuant to 8 C.F.R. 103.3 (a) (2) (v) (B) (1) as being untimely filed.

The petitioner, a sports and holistic health center, seeks to extend the employment of the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that the beneficiary has been or would be employed in the United States in a primarily managerial or executive capacity.

Pursuant to 8 C.F.R. 103.3(a)(2)(i), an affected party has 30 days after service of a decision to file an appeal with the office that made the unfavorable decision. The record reflects that the director's decision of May 25, 2001, was sent to the petitioner at its address of record. The appeal was received by the Service 35 days later on June 29, 2001. The appeal was untimely filed.

The regulation at 8 C.F.R. 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2), or a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. 8 C.F.R. 103.5(a)(3) requires that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy.

On appeal, the petitioner states that it has not grown as expected and states that it has satisfied the "intent of Managerial and Executive Capacity." The petitioner does not provide any new facts to be considered in the reopened proceeding, nor does the petitioner provide affidavits or other documentary evidence. Furthermore, the petitioner neither states a clear reason for reconsideration nor provides any precedent decision to establish that the decision was based on an incorrect application of law or Service policy. For these reasons, the appeal will not be treated as a motion to reopen or reconsider.

The appeal was untimely filed and the petitioner has failed to provide any new facts or evidence that support a motion to reopen, nor has the petitioner stated a clear reason for reconsideration to support a motion to reconsider. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed.